

HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HARMONY GOLD U.S.A., INC.,	)	CASE No. 2:17-CV-00327-TSZ
)	
	)	DECLARATION OF TODD S.
Plaintiff,	)	FAIRCHILD IN SUPPORT OF
	)	PIRANHA GAMES' OPPOSITION TO
v.	)	PLAINTIFF'S MOTION FOR LEAVE
	)	TO FILE A SECOND AMENDED
HAREBRAINED SCHEMES LLC,	)	COMPLAINT (ECF No. 51)
HAREBRAINED HOLDINGS, INC., JORDAN)	
WEISMAN, PIRANHA GAMES INC. and DOES	)	NOTE ON MOTION CALENDAR:
1-10,	)	DECEMBER 8, 2017
)	
	)	ORAL ARGUMENT REQUESTED
Defendants.)	

Todd S. Fairchild declares as follows:

1. I am an attorney practicing with the law firm of Dorsey & Whitney LLP, which represents defendant Piranha Games Inc. ("Piranha") in this matter. The statements made below are based on my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of the August 23, 2017 Amended Judgment Confirming Arbitration Award from the case captioned *Harmony Gold, USA, Inc. v. Tatsunoko Production Co., Ltd.*, Case No. 2:17-cv-06034-PA-MRW (C.D. Cal.). The Amended Judgment confirms the June 27, 2017 Arbitration Award between Harmony Gold U.S.A., Inc. ("Harmony Gold") and Tatsunoko Production Co., Ltd. ("Tatsunoko"). The Arbitration Award

1 is attached as Exhibit A to the Amended Judgment. Portions have been highlighted.

2 3. Attached as Exhibit 2 is a true and correct copy of a certified U.S. Copyright
3 Office Certificate of Registration for the work registered to Studio Nue and Big West under
4 Registration No. Vau 534-107, followed by a true and correct certified copy of the deposit
5 materials for U.S. Copyright Registration No. Vau 534-107, which show images of the Big West
6 Characters that are the subject of Studio Nue and Big West's copyright registration. Portions
7 have been highlighted.

8 4. Attached as Exhibit 3 is a true and correct copy of an amendment dated January
9 20, 2003 to the license agreement between Tatsunoko and Harmony Gold pertaining to the
10 *Macross* Motion Picture and the Big West Characters. Harmony Gold produced this document
11 during discovery in this lawsuit as Bates No. HG00000050. Portions have been highlighted.

12 5. Piranha filed its Motion for Summary Judgment (ECF. No. 47) after numerous
13 discussions with opposing counsel regarding the significance of the Federal Court Judgment (Ex.
14 1 hereto) and other evidence. Harmony Gold's position has always been that the Judgment does
15 not mean what it says. Harmony Gold also expressed an intention to amend its complaint a
16 second time to explain the source of its alleged copyrights. Piranha waited five weeks after
17 Harmony Gold's attorneys first indicated that they planned to seek leave to amend. When the
18 motion for leave to amend was not forthcoming, Piranha filed its Motion for Summary
19 Judgment.
20

21 I declare under penalty of perjury pursuant to the laws of the United States of America
22 that the foregoing is true and correct to the best of my information, knowledge, and belief.

23 Signed this 4th day of December, 2017 at Seattle, Washington.

24 /s/ Todd S. Fairchild
25 Todd S. Fairchild